

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FELIPE RODRIGUEZ,

Plaintiff,

-against-

THE CITY OF NEW YORK, et. al.,

Defendants.

**ANSWER OF DEFENDANTS
CITY OF NEW YORK, JOHN
BEISEL, JOHN CALIFANO,
GEORGE ZAROOGIAN, JOHN
WILDE AND JERRY FENNEL
TO AMENDED COMPLAINT**

JURY TRIAL DEMANDED

21 Civ. 1649 (AMD)(RLM)

Defendants City of New York (the “City”), John Beisel, John Califano, John Wilde, George Zaroogian and Jerry Fennel, by their attorney, the Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, for their answer to plaintiffs’ amended complaint (the “Complaint”), respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph “1” of the Complaint, except admit only that plaintiff purports to bring this action and assert claims as stated therein.
2. Deny the allegations set forth in paragraph “2” of the Complaint, except admit only that plaintiff, upon information and belief, was granted clemency by then Governor Andrew Cuomo and was released from prison.
3. Deny the allegations set forth in paragraph “3” of the Complaint.
4. Deny the allegations set forth in paragraph “4” of the Complaint.
5. Deny the allegations set forth in paragraph “5” of the Complaint, except admit only that plaintiff purports to bring this action and assert claims as stated therein.
6. Deny the allegations set forth in paragraph “6” of the Complaint, except admit only that plaintiff purports to bring this action and assert claims as stated therein.

7. Deny the allegations set forth in paragraph “7” of the Complaint, except admit only that plaintiff purports to invoke the Court’s jurisdiction, as stated therein.

8. Deny the allegations set forth in paragraph “8” of the Complaint, except admit only that plaintiff purports to invoke the Court’s jurisdiction, as stated therein.

9. The allegations set forth in paragraph “9” of the Complaint are not averments of fact, but rather are legal conclusions to which no response is required.

10. The allegations set forth in paragraph “10” of the Complaint are not averments of fact, but rather are legal conclusions to which no response is required.

11. Deny the allegations set forth in paragraph “11” of the Complaint, except admit only that the referenced claim has not been adjusted or paid.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the Complaint, except admit only that any General Municipal Law hearing speaks for itself.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “14” of the Complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the Complaint.

16. Deny the allegations set forth in paragraph “16” of the Complaint, except admit only that plaintiff purports to lay venue, as stated therein.

17. Deny the allegations set forth in paragraph “17” of the Complaint, except admit only that plaintiff purports to demand trial by jury, as stated therein.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the Complaint.

19. Deny the allegations set forth in paragraph “19” of the Complaint, except admit only that the City of New York is a municipal corporation that maintains the NYPD and respectfully refer the court to the New York City Charter and the Administrative Code for a recitation of the relationship between defendant City and the NYPD.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “20” of the Complaint.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “21” of the Complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “22” of the Complaint.

23. Deny the allegations set forth in paragraph “23” of the Complaint, except admit only that John Beisel is a retired NYPD detective.

24. Deny the allegations set forth in paragraph “24” of the Complaint, except admit only that John Califano is a retired NYPD detective.

25. Deny the allegations set forth in paragraph “25” of the Complaint, except admit only that John Wilde is a retired NYPD detective.

26. Deny the allegations set forth in paragraph “26” of the Complaint, except admit only that Jerry Fennel is a retired NYPD detective.

27. Deny the allegations set forth in paragraph “27” of the Complaint, except admit only that George Zaroogian is a retired NYPD sergeant.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “28” of the Complaint.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “29” of the Complaint.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “30” of the Complaint.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the Complaint.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “32” of the Complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “33” of the Complaint.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34” of the Complaint.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “35” of the Complaint.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “36” of the Complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “37” of the Complaint, except admit only, upon information and belief, that plaintiff was an NYPD auxiliary police officer.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “38” of the Complaint.

39. Deny the allegations set forth in paragraph “39” of the Complaint, except admit only that Maureen Fernandez was murdered and her body found.

40. Deny the allegations set forth in paragraph “40” of the Complaint, except admit only that Maureen Fernandez’s body was found near Dubofsky’s and LIRR train tracks.

41. Deny the allegations set forth in paragraph “41” of the Complaint.

42. Deny the allegations set forth in paragraph “42” of the Complaint, except admit only that NYPD detectives and officers responded to the scene where Maureen Fernandez’s body was found.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “43” of the Complaint.

44. Deny the allegations set forth in paragraph “44” of the Complaint.

45. Deny the allegations set forth in paragraph “45” of the Complaint.

46. Admit

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “47” of the Complaint, except admit only that Robert Soloney was interviewed.

48. Deny the allegations set forth in paragraph “48” of the Complaint.

49. Deny the allegations set forth in paragraph “49” of the Complaint.

50. Deny the allegations set forth in paragraph “50” of the Complaint, except admit only that Robert Soloney did not see any passengers in the car that he saw.

51. Deny the allegations set forth in paragraph “51” of the Complaint, except admit only that Maureen Fernandez’s body was located on LIRR property and that the LIRR police participated in the investigation of the murder of Maureen Fernandez.

52. Deny the allegations set forth in paragraph “52” of the Complaint, except admit only that Maureen Fernandez, upon information and belief, was at Wyckoff Heights Hospital, where her daughter was being treated, before her murder.

53. Upon information and belief, admit

54. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “54” of the Complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “55” of the Complaint.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “56” of the Complaint, except admit only that Maureen Fernandez left the hospital and went to the Little Liva Bar that evening.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “57” of the Complaint.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “58” of the Complaint.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “59” of the Complaint, except admit only that Maureen Fernandez was with a male at the Little Liva Bar that evening.

60. Deny the allegations set forth in paragraph “60” of the Complaint.

61. Deny the allegations set forth in paragraph “61” of the Complaint.

62. Deny the allegations set forth in paragraph “62” of the Complaint.

63. Deny the allegations set forth in paragraph “63” of the Complaint.

64. Deny the allegations set forth in paragraph “64” of the Complaint, except admit only that the bartender and bar patrons at the Little Liva Bar were interviewed by detectives.

65. Deny the allegations set forth in paragraph “65” of the Complaint, except admit only that the bartender and bar patrons at the Little Liva Bar gave descriptions of the male who was with Maureen Fernandez at the bar.

66. Deny the allegations set forth in paragraph “66” of the Complaint.

67. Deny the allegations set forth in paragraph “67” of the Complaint.

68. Deny the allegations set forth in paragraph “68” of the Complaint.

69. Deny the allegations set forth in paragraph “69” of the Complaint.

70. Deny the allegations set forth in paragraph “70” of the Complaint.

71. Deny the allegations set forth in paragraph “71” of the Complaint, except admit only that there was a recorded interview taken of Robert Thompson by LIRR Police detectives.

72. Deny the allegations set forth in paragraph “72” of the Complaint, except admit only that Robert Thompson’s statement speaks for itself.

73. Deny the allegations set forth in paragraph “73” of the Complaint, except admit only that Robert Thompson’s statement speaks for itself.

74. Deny the allegations set forth in paragraph “74” of the Complaint, except admit only that Robert Thompson’s statement speaks for itself.

75. Deny the allegations set forth in paragraph “75” of the Complaint, except admit only that Robert Thompson’s statement speaks for itself.

76. Deny the allegations set forth in paragraph “76” of the Complaint, except admit only that Robert Thompson’s statement speaks for itself.

77. Deny the allegations set forth in paragraph “77” of the Complaint.

78. Deny the allegations set forth in paragraph “78” of the Complaint.

79. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “79” of the Complaint.

80. Deny the allegations set forth in paragraph “80” of the Complaint.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “81” of the Complaint.

82. Deny the allegations set forth in paragraph “82” of the Complaint.

83. Deny the allegations set forth in paragraph “83” of the Complaint.

84. Deny the allegations set forth in paragraph “84” of the Complaint.

85. Deny the allegations set forth in paragraph “85” of the Complaint.

86. Deny the allegations set forth in paragraph “86” of the Complaint, except admit only that any “police records” speak for themselves.

87. Deny the allegations set forth in paragraph “87” of the Complaint.

88. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “88” of the Complaint.

89. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “89” of the Complaint.

90. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “90” of the Complaint.

91. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “91” of the Complaint.

92. Deny the allegations set forth in paragraph “92” of the Complaint.

93. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “93” of the Complaint.

94. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “94” of the Complaint, except admit only that any “police records” speak for themselves.

95. Deny the allegations set forth in paragraph “95” of the Complaint, except admit only that a profile of Maureen Fernandez’s murderer was developed.

96. Deny the allegations set forth in paragraph “96” of the Complaint, except admit only that the profile speaks for itself.

97. Deny the allegations set forth in paragraph “97” of the Complaint.

98. Deny the allegations set forth in paragraph “98” of the Complaint.

99. Deny the allegations set forth in paragraph “99” of the Complaint.

100. Deny the allegations set forth in paragraph “100” of the Complaint.

101. Deny the allegations set forth in paragraph “101” of the Complaint.

102. Deny the allegations set forth in paragraph “102” of the Complaint.

103. Deny the allegations set forth in paragraph “103” of the Complaint.

104. Deny the allegations set forth in paragraph “104” of the Complaint.

105. Deny the allegations set forth in paragraph “105” of the Complaint.

106. Deny the allegations set forth in paragraph “106” of the Complaint.

107. Deny the allegations set forth in paragraph “107” of the Complaint.

108. Deny the allegations set forth in paragraph “108” of the Complaint.

109. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “109” of the Complaint.

110. Deny the allegations set forth in paragraph “110” of the Complaint.

111. Deny the allegations set forth in paragraph “111” of the Complaint.

112. Deny the allegations set forth in paragraph “112” of the Complaint.

113. Deny the allegations set forth in paragraph “113” of the Complaint, except admit only that Edward Denning was not a suspect in the Maureen Fernandez murder.

114. Deny the allegations set forth in paragraph “114” of the Complaint, except admit only that the defendant Beisel was assigned to the investigation into the murder of Maureen Fernandez.

115. Deny the allegations set forth in paragraph “115” of the Complaint.

116. Deny the allegations set forth in paragraph “116” of the Complaint, except admit only that detectives learned of Sierra’s car.

117. Deny the allegations set forth in paragraph “117” of the Complaint, except admit only that Sierra’s car was located near Wyckoff Hospital.

118. Deny the allegations set forth in paragraph “118” of the Complaint.

119. Deny the allegations set forth in paragraph “119” of the Complaint.

120. Deny the allegations set forth in paragraph “120” of the Complaint.

121. Deny the allegations set forth in paragraph “121” of the Complaint, except admit only that Sierra’s car was vouchered by the NYPD.

122. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “122” of the Complaint, except admit, upon information and belief, that Sierra had purchased the car from Javier Ramos.

123. Upon information and belief, admit

124. Deny the allegations set forth in paragraph “124” of the Complaint.

125. Deny the allegations set forth in paragraph “125” of the Complaint.

126. Deny the allegations set forth in paragraph “126” of the Complaint.

127. Deny the allegations set forth in paragraph “127” of the Complaint.

128. Deny the allegations set forth in paragraph “128” of the Complaint.

129. Deny the allegations set forth in paragraph “129” of the Complaint.

130. Deny the allegations set forth in paragraph “130” of the Complaint.

131. Deny the allegations set forth in paragraph “131” of the Complaint.

132. Deny the allegations set forth in paragraph “132” of the Complaint.

133. Deny the allegations set forth in paragraph “133” of the Complaint.

134. Deny the allegations set forth in paragraph “134” of the Complaint.

135. Deny the allegations set forth in paragraph “135” of the Complaint.

136. Deny the allegations set forth in paragraph “136” of the Complaint, except admit only that Ramos told detectives that he had loaned the car to both plaintiff and Richard Pereira.

137. Deny the allegations set forth in paragraph “137” of the Complaint.

138. Deny the allegations set forth in paragraph “138” of the Complaint.

139. Deny the allegations set forth in paragraph “139” of the Complaint.

140. Deny the allegations set forth in paragraph “140” of the Complaint.

141. Deny the allegations set forth in paragraph “141” of the Complaint.
142. Deny the allegations set forth in paragraph “142” of the Complaint.
143. Deny the allegations set forth in paragraph “143” of the Complaint, except

admit only that the referenced NYPD DD5 speaks for itself.

144. Deny the allegations set forth in paragraph “144” of the Complaint.
145. Deny the allegations set forth in paragraph “145” of the Complaint.
146. Deny the allegations set forth in paragraph “146” of the Complaint.
147. Deny the allegations set forth in paragraph “147” of the Complaint, except

admit only that Javier Ramos initially accused Richard Pereira of the murder.

148. Deny the allegations set forth in paragraph “148” of the Complaint, except
admit only that the referenced statement speaks for itself.

149. Deny the allegations set forth in paragraph “149” of the Complaint.
150. Deny the allegations set forth in paragraph “150” of the Complaint.
151. Deny the allegations set forth in paragraph “151” of the Complaint.
152. Deny the allegations set forth in paragraph “152” of the Complaint.
153. Deny the allegations set forth in paragraph “153” of the Complaint.
154. Deny the allegations set forth in paragraph “154” of the Complaint.
155. Deny the allegations set forth in paragraph “155” of the Complaint.
156. Deny the allegations set forth in paragraph “156” of the Complaint.
157. Deny the allegations set forth in paragraph “157” of the Complaint.
158. Deny the allegations set forth in paragraph “158” of the Complaint.
159. Deny the allegations set forth in paragraph “159” of the Complaint.
160. Deny the allegations set forth in paragraph “160” of the Complaint.

161. Deny the allegations set forth in paragraph “161” of the Complaint, except admit only that certain witnesses did not identify Pereira at a lineup.

162. Deny the allegations set forth in paragraph “162” of the Complaint, except admit only that Pereira’s arrest was voided and he was released.

163. Deny the allegations set forth in paragraph “163” of the Complaint, except admit only that portions of the car were submitted for testing.

164. Deny the allegations set forth in paragraph “164” of the Complaint.

165. Deny the allegations set forth in paragraph “165” of the Complaint, except admit only that a Nagra recording device was used.

166. Deny the allegations set forth in paragraph “166” of the Complaint, except admit only that the Nagra recording speaks for itself.

167. Deny the allegations set forth in paragraph “167” of the Complaint.

168. Deny the allegations set forth in paragraph “168” of the Complaint.

169. Deny the allegations set forth in paragraph “169” of the Complaint.

170. Deny the allegations set forth in paragraph “170” of the Complaint.

171. Deny the allegations set forth in paragraph “171” of the Complaint.

172. Deny the allegations set forth in paragraph “172” of the Complaint.

173. Deny the allegations set forth in paragraph “173” of the Complaint.

174. Deny the allegations set forth in paragraph “174” of the Complaint, except admit only that the Nagra recording speaks for itself.

175. Deny the allegations set forth in paragraph “175” of the Complaint, except admit only that Gladys Rodriguez was interviewed.

176. Deny the allegations set forth in paragraph “176” of the Complaint.

177. Deny the allegations set forth in paragraph “177” of the Complaint.
178. Deny the allegations set forth in paragraph “178” of the Complaint.
179. Deny the allegations set forth in paragraph “179” of the Complaint.
180. Deny the allegations set forth in paragraph “180” of the Complaint.
181. Deny the allegations set forth in paragraph “181” of the Complaint.
182. Deny the allegations set forth in paragraph “182” of the Complaint.
183. Deny the allegations set forth in paragraph “183” of the Complaint, except admit only that it was requested that Felipe Rodriguez contact detectives.

184. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “184” of the Complaint, except admit only that Felipe Rodriguez contacted detectives.

185. Deny the allegations set forth in paragraph “185” of the Complaint, except admit only that Felipe Rodriguez was interviewed by Det. Beisel.

186. Deny the allegations set forth in paragraph “186” of the Complaint.
187. Deny the allegations set forth in paragraph “187” of the Complaint.
188. Deny the allegations set forth in paragraph “188” of the Complaint.
189. Deny the allegations set forth in paragraph “189” of the Complaint.
190. Deny the allegations set forth in paragraph “190” of the Complaint.
191. Deny the allegations set forth in paragraph “191” of the Complaint.
192. Deny the allegations set forth in paragraph “192” of the Complaint.
193. Deny the allegations set forth in paragraph “193” of the Complaint.
194. Deny the allegations set forth in paragraph “194” of the Complaint.
195. Deny the allegations set forth in paragraph “195” of the Complaint.

196. Deny the allegations set forth in paragraph “196” of the Complaint.
197. Deny the allegations set forth in paragraph “197” of the Complaint.
198. Deny the allegations set forth in paragraph “198” of the Complaint.
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202. Deny the allegations set forth in paragraph “202” of the Complaint.
203. Deny the allegations set forth in paragraph “203” of the Complaint.
204. Deny the allegations set forth in paragraph “204” of the Complaint.
205. Deny the allegations set forth in paragraph “205” of the Complaint.
206. Deny the allegations set forth in paragraph “206” of the Complaint, except admit only that Javier Ramos’ statement speaks for itself.
207. Deny the allegations set forth in paragraph “207” of the Complaint.
208. Deny the allegations set forth in paragraph “208” of the Complaint, except admit only that Javier Ramos’ statement speaks for itself.
209. Deny the allegations set forth in paragraph “209” of the Complaint.
210. Deny the allegations set forth in paragraph “210” of the Complaint.
211. Deny the allegations set forth in paragraph “211” of the Complaint.
212. Deny the allegations set forth in paragraph “212” of the Complaint.
213. Deny the allegations set forth in paragraph “213” of the Complaint.
214. Deny the allegations set forth in paragraph “214” of the Complaint.
215. Deny the allegations set forth in paragraph “215” of the Complaint.
216. Deny the allegations set forth in paragraph “216” of the Complaint.

217. Deny the allegations set forth in paragraph “217” of the Complaint.
218. Deny the allegations set forth in paragraph “218” of the Complaint.
219. Deny the allegations set forth in paragraph “219” of the Complaint.
220. Deny the allegations set forth in paragraph “220” of the Complaint.
221. Deny the allegations set forth in paragraph “221” of the Complaint.
222. Deny the allegations set forth in paragraph “222” of the Complaint.
223. Deny the allegations set forth in paragraph “223” of the Complaint.
224. Deny the allegations set forth in paragraph “224” of the Complaint.
225. Deny the allegations set forth in paragraph “225” of the Complaint, except admit only that plaintiff was handcuffed and placed in a cell.
226. Deny the allegations set forth in paragraph “226” of the Complaint.
227. Deny the allegations set forth in paragraph “227” of the Complaint, except admit only that any LIRR police department memo speaks for itself.
228. Deny the allegations set forth in paragraph “228” of the Complaint.
229. Deny the allegations set forth in paragraph “229” of the Complaint, except admit only that plaintiff was placed in a lineup.
230. Deny the allegations set forth in paragraph “230” of the Complaint, except admit only that a lineup was conducted.
231. Deny the allegations set forth in paragraph “231” of the Complaint, except admit only that William Perry, Joseph Castillo and Robert Thompson were lineup witnesses.
232. Deny the allegations set forth in paragraph “232” of the Complaint.
233. Deny the allegations set forth in paragraph “233” of the Complaint.
234. Deny the allegations set forth in paragraph “234” of the Complaint.

235. Deny the allegations set forth in paragraph “235” of the Complaint.
236. Deny the allegations set forth in paragraph “236” of the Complaint.
237. Deny the allegations set forth in paragraph “237” of the Complaint.
238. Deny the allegations set forth in paragraph “238” of the Complaint.
239. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “239” of the Complaint.

240. Deny the allegations set forth in paragraph “240” of the Complaint, except admit only that William Perry’s lineup sheet speaks for itself.

241. Deny the allegations set forth in paragraph “241” of the Complaint, except admit only that Joseph Castillo’s lineup sheet speaks for itself.

242. Deny the allegations set forth in paragraph “242” of the Complaint, except admit only that plaintiff was transported to Queens Central Booking, and after arraignment, to Rikers Island, upon his arrest.

243. Deny the allegations set forth in paragraph “243” of the Complaint, except admit that the criminal court complaint signed by Det. Beisel speaks for itself.

244. Deny the allegations set forth in paragraph “244” of the Complaint.
245. Deny the allegations set forth in paragraph “245” of the Complaint.
246. Deny the allegations set forth in paragraph “246” of the Complaint.
247. Deny the allegations set forth in paragraph “247” of the Complaint.
248. Deny the allegations set forth in paragraph “248” of the Complaint.
249. Deny the allegations set forth in paragraph “249” of the Complaint.
250. Deny the allegations set forth in paragraph “250” of the Complaint.
251. Deny the allegations set forth in paragraph “251” of the Complaint.

252. Deny the allegations set forth in paragraph “252” of the Complaint.
253. Deny the allegations set forth in paragraph “253” of the Complaint.
254. Deny the allegations set forth in paragraph “254” of the Complaint.
255. Deny the allegations set forth in paragraph “255” of the Complaint.
256. Deny the allegations set forth in paragraph “256” of the Complaint.
257. Deny the allegations set forth in paragraph “257” of the Complaint.
258. Deny the allegations set forth in paragraph “258” of the Complaint.
259. Deny the allegations set forth in paragraph “259” of the Complaint, except

admit only the former Queens County ADA David Dikman presented the case to the Grand Jury.

260. Deny the allegations set forth in paragraph “260” of the Complaint.
261. Deny the allegations set forth in paragraph “261” of the Complaint.
262. Deny the allegations set forth in paragraph “262” of the Complaint.
263. Deny the allegations set forth in paragraph “263” of the Complaint.
264. Deny the allegations set forth in paragraph “264” of the Complaint, except

admit only that Joseph Castillo’s Grand Jury testimony speaks for itself.

265. Deny the allegations set forth in paragraph “265” of the Complaint
266. Deny the allegations set forth in paragraph “266” of the Complaint, except

admit only that Robert Thompson’s Grand Jury testimony speaks for itself.

267. Deny the allegations set forth in paragraph “267” of the Complaint.
268. Deny the allegations set forth in paragraph “268” of the Complaint.
269. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “269” of the Complaint.
270. Deny the allegations set forth in paragraph “270” of the Complaint.

271. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “271” of the Complaint.

272. Upon information and belief, admit

273. Deny the allegation set forth in paragraph “273” of the Complaint.

274. Deny the allegation set forth in paragraph “274” of the Complaint.

275. Upon information and belief, admit

276. Deny the allegation set forth in paragraph “276” of the Complaint.

277. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “277” of the Complaint.

278. Deny the allegation set forth in paragraph “278” of the Complaint.

279. Deny the allegation set forth in paragraph “279” of the Complaint.

280. Deny the allegation set forth in paragraph “280” of the Complaint.

281. Deny the allegation set forth in paragraph “281” of the Complaint.

282. Deny the allegation set forth in paragraph “282” of the Complaint.

283. Deny the allegation set forth in paragraph “283” of the Complaint.

284. Deny the allegation set forth in paragraph “284” of the Complaint.

285. Deny the allegation set forth in paragraph “285” of the Complaint.

286. Deny the allegation set forth in paragraph “286” of the Complaint.

287. Deny the allegation set forth in paragraph “287” of the Complaint.

288. Deny the allegation set forth in paragraph “288” of the Complaint.

289. Deny the allegation set forth in paragraph “289” of the Complaint.

290. Deny the allegation set forth in paragraph “290” of the Complaint.

291. Deny the allegation set forth in paragraph “291” of the Complaint.

292. Deny the allegation set forth in paragraph “292” of the Complaint.
293. Deny the allegation set forth in paragraph “293” of the Complaint.
294. Deny the allegation set forth in paragraph “294” of the Complaint.
295. Deny the allegation set forth in paragraph “295” of the Complaint, except admit only that Rosa’s trial testimony speaks for itself.
296. Deny the allegation set forth in paragraph “296” of the Complaint.
297. Deny the allegation set forth in paragraph “297” of the Complaint.
298. Deny the allegation set forth in paragraph “298” of the Complaint.
299. Deny the allegation set forth in paragraph “299” of the Complaint.
300. Deny the allegation set forth in paragraph “300” of the Complaint.
301. Deny the allegation set forth in paragraph “301” of the Complaint.
302. Deny the allegation set forth in paragraph “302” of the Complaint.
303. Deny the allegation set forth in paragraph “303” of the Complaint.
304. Deny the allegation set forth in paragraph “304” of the Complaint.
305. Deny the allegation set forth in paragraph “305” of the Complaint.
306. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “306” of the Complaint.
307. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “307” of the Complaint, except the note speaks for itself.
308. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “308” of the Complaint.
309. Deny the allegations set forth in paragraph “309” of the Complaint.

310. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “310” of the Complaint.

311. Deny the allegations set forth in paragraph “311” of the Complaint.

312. Deny the allegations set forth in paragraph “312” of the Complaint.

313. Deny the allegations set forth in paragraph “313” of the Complaint.

314. Deny the allegations set forth in paragraph “314” of the Complaint.

315. Deny the allegations set forth in paragraph “315” of the Complaint.

316. Deny the allegations set forth in paragraph “317” of the Complaint.

317. Deny the allegations set forth in paragraph “317” of the Complaint.

318. Deny the allegations set forth in paragraph “318” of the Complaint.

319. Deny the allegations set forth in paragraph “319” of the Complaint.

320. Deny the allegations set forth in paragraph “320” of the Complaint.

321. Deny the allegations set forth in paragraph “321” of the Complaint.

322. Deny the allegations set forth in paragraph “322” of the Complaint.

323. Deny the allegations set forth in paragraph “323” of the Complaint.

324. Deny the allegations set forth in paragraph “324” of the Complaint.

325. Deny the allegations set forth in paragraph “325” of the Complaint.

326. Deny the allegations set forth in paragraph “326” of the Complaint.

327. Deny the allegations set forth in paragraph “327” of the Complaint.

328. Deny the allegations set forth in paragraph “328” of the Complaint.

329. Upon information and belief, admit

330. Upon information and belief, admit

331. Upon information and belief, admit

332. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “332” of the Complaint.

333. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “333” of the Complaint.

334. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “334” of the Complaint.

335. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “335” of the Complaint.

336. Deny the allegations set forth in paragraph “336” of the Complaint.

337. Deny the allegations set forth in paragraph “337” of the Complaint, except admit only that, upon information and belief, plaintiff received clemency from then Gov. Andrew Cuomo.

338. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “338” of the Complaint.

339. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “339” of the Complaint.

340. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “340” of the Complaint.

341. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “341” of the Complaint.

342. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “342” of the Complaint.

343. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “343” of the Complaint.

344. Deny the allegations set forth in paragraph “344” of the Complaint, except admit only that the QCDA conducted a reinvestigation of plaintiff’s conviction.

345. Deny the allegations set forth in paragraph “345” of the Complaint.

346. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “346” of the Complaint.

347. Deny the allegations set forth in paragraph “347” of the Complaint.

348. Deny the allegations set forth in paragraph “348” of the Complaint, except admit only that Judge Zayas’ decision speaks for itself.

349. Deny the allegations set forth in paragraph “349” of the Complaint, except admit only that Queens County ADA Robert Masters’ statements speak for themselves.

350. Deny the allegations set forth in paragraph “350” of the Complaint, except admit only that Queens County ADA Robert Masters’ statements speak for themselves.

351. Deny the allegations set forth in paragraph “351” of the Complaint, except admit only that Queens County ADA Robert Masters’ statements speak for themselves.

352. Deny the allegations set forth in paragraph “352” of the Complaint, except admit only that Queens County ADA Robert Masters’ statements speak for themselves.

353. Deny the allegations set forth in paragraph “353” of the Complaint, except admit only that Queens County ADA Robert Masters’ statements speak for themselves.

354. Deny the allegations set forth in paragraph “354” of the Complaint, except admit only that Queens County ADA Robert Masters’ statements speak for themselves.

355. Deny the allegations set forth in paragraph “355” of the Complaint.

356. Deny the allegations set forth in paragraph “356” of the Complaint.

357. Deny the allegations set forth in paragraph “357” of the Complaint.

358. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “358” of the Complaint.

359. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “359” of the Complaint.

360. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “360” of the Complaint.

361. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “361” of the Complaint.

362. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “362” of the Complaint.

363. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “363” of the Complaint.

364. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “364” of the Complaint.

365. Deny the allegations set forth in paragraph “365” of the Complaint.

366. Deny the allegations set forth in paragraph “366” of the Complaint.

367. Deny the allegations set forth in paragraph “367” of the Complaint.

368. In response to the allegations set forth in paragraph “368” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of their answer, as if fully set forth herein.

369. Deny the allegations set forth in paragraph “369” of the Complaint.

370. Deny the allegations set forth in paragraph “370” of the Complaint.

371. Deny the allegations set forth in paragraph “371” of the Complaint.

372. Deny the allegations set forth in paragraph “372” of the Complaint.

373. In response to the allegations set forth in paragraph “373” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of their answer, as if fully set forth herein.

374. Deny the allegations set forth in paragraph “374” of the Complaint.

375. Deny the allegations set forth in paragraph “375” of the Complaint.

376. Deny the allegations set forth in paragraph “376” of the Complaint.

377. Deny the allegations set forth in paragraph “377” of the Complaint.

378. Deny the allegations set forth in paragraph “378” of the Complaint.

379. In response to the allegations set forth in paragraph “379” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of their answer, as if fully set forth herein.

380. Deny the allegations set forth in paragraph “380” of the Complaint.

381. Deny the allegations set forth in paragraph “381” of the Complaint.

382. Deny the allegations set forth in paragraph “382” of the Complaint.

383. In response to the allegations set forth in paragraph “383” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of their answer, as if fully set forth herein.

384. Deny the allegations set forth in paragraph “384” of the Complaint.

385. Deny the allegations set forth in paragraph “385” of the Complaint.

386. Deny the allegations set forth in paragraph “386” of the Complaint.

387. Deny the allegations set forth in paragraph “387” of the Complaint.

388. Deny the allegations set forth in paragraph “388” of the Complaint.

389. Deny the allegations set forth in paragraph “389” of the Complaint.

390. In response to the allegations set forth in paragraph “390” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of their answer, as if fully set forth herein.

391. Deny the allegations set forth in paragraph “391” of the Complaint.

392. Deny the allegations set forth in paragraph “392” of the Complaint.

393. Deny the allegations set forth in paragraph “393” of the Complaint.

394. Deny the allegations set forth in paragraph “394” of the Complaint.

395. In response to the allegations set forth in paragraph “395” of the Complaint, defendants repeat and reallege each response set forth in the preceding paragraphs of their answer, as if fully set forth herein.

396. Deny the allegations set forth in paragraph “396” of the Complaint.

397. Deny the allegations set forth in paragraph “397” of the Complaint.

398. Deny the allegations set forth in paragraph “398” of the Complaint.

399. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “399” of the Complaint is required.

400. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “400” of the Complaint is required.

401. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “401” of the Complaint is required.

402. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “402” of the Complaint is required.

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407. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “407” of the Complaint is required.

408. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “408” of the Complaint is required.

409. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “409” of the Complaint is required.

410. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “410” of the Complaint is required.

411. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “411” of the Complaint is required.

412. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “412” of the Complaint is required.

413. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “413” of the Complaint is required.

414. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “414” of the Complaint is required.

415. As Count VII of the Complaint has been dismissed by the Court, no response to paragraph “415” of the Complaint is required.

416. As Count VIII of the Complaint has been dismissed by the Court, no response to paragraph “416” of the Complaint is required.

417. As Count VIII of the Complaint has been dismissed by the Court, no response to paragraph “417” of the Complaint is required.

418. As Count VIII of the Complaint has been dismissed by the Court, no response to paragraph “418” of the Complaint is required.

419. As Count VIII of the Complaint has been dismissed by the Court, no response to paragraph “419” of the Complaint is required.

420. As Count VIII of the Complaint has been dismissed by the Court, no response to paragraph “420” of the Complaint is required.

421. As Count VIII of the Complaint has been dismissed by the Court, no response to paragraph “421” of the Complaint is required.

422. As Count VIII of the Complaint has been dismissed by the Court, no response to paragraph “422” of the Complaint is required.

423. As Count VIII of the Complaint has been dismissed by the Court, no response to paragraph “423” of the Complaint is required.

424. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “424” of the Complaint is required.

425. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “425” of the Complaint is required.

426. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “426” of the Complaint is required.

427. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “427” of the Complaint is required.

428. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “428” of the Complaint is required.

429. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “429” of the Complaint is required.

430. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “430” of the Complaint is required.

431. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “431” of the Complaint is required.

432. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “432” of the Complaint is required.

433. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “433” of the Complaint is required.

434. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “434” of the Complaint is required.

435. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “435” of the Complaint is required.

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464. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “464” of the Complaint is required.

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469. As Count IX of the Complaint has been dismissed by the Court, no response to paragraph “469” of the Complaint is required.

470. As Count X of the Complaint has been dismissed by the Court, and does not pertain to the answering defendants, no response to paragraph “470” of the Complaint is required.

471. As Count X of the Complaint has been dismissed by the Court, and does not pertain to the answering defendants, no response to paragraph “471” of the Complaint is required.

472. As Count X of the Complaint has been dismissed by the Court, and does not pertain to the answering defendants, no response to paragraph “472” of the Complaint is required.

473. As Count X of the Complaint has been dismissed by the Court, and does not pertain to the answering defendants, no response to paragraph “473” of the Complaint is required.

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485. As Count X of the Complaint has been dismissed by the Court, and does not pertain to the answering defendants, no response to paragraph “485” of the Complaint is required.

486. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “486” of the Complaint is required.

487. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “487” of the Complaint is required.

488. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “488” of the Complaint is required.

489. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “489” of the Complaint is required.

490. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “490” of the Complaint is required.

491. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “491” of the Complaint is required.

492. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “492” of the Complaint is required.

493. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “493” of the Complaint is required.

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517. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “517” of the Complaint is required.

518. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “518” of the Complaint is required.

519. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “519” of the Complaint is required.

520. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “520” of the Complaint is required.

521. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “521” of the Complaint is required.

522. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “522” of the Complaint is required.

523. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “523” of the Complaint is required.

524. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “524” of the Complaint is required.

525. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph “525” of the Complaint is required.

526. As Count XI of the Complaint has been dismissed by the Court, no response to paragraph "526" of the Complaint is required.

FIRST AFFIRMATIVE DEFENSE:

527. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE:

528. Defendants City, Beisel, Califano, Wilde, Fennel and Zaroogian have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any Act of Congress providing for the protection of civil rights.

THIRD AFFIRMATIVE DEFENSE:

529. Any injuries alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or the culpable or negligent conduct of others or non-parties and were not the proximate result of any act of the defendants City, Beisel, Califano, Wilde, Fennel and Zaroogian.

FOURTH AFFIRMATIVE DEFENSE:

530. Defendants Beisel, Califano, Wilde, Fennel and Zaroogian have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and, therefore, are protected by qualified immunity.

FIFTH AFFIRMATIVE DEFENSE

531. At all times relevant to the acts alleged in the Complaint, defendants Beisel, Califano, Wilde, Fennel and Zaroogian acted reasonably in the proper and lawful exercise of their discretion.

SIXTH AFFIRMATIVE DEFENSE

532. Plaintiff has failed to comply with New York General Municipal Law §§ 50(e), *et seq.*

SEVENTH AFFIRMATIVE DEFENSE

533. There was probable cause for plaintiff's arrest, detention and prosecution.

EIGHTH AFFIRMATIVE DEFENSE

534. At all times relevant to the acts alleged in the complaint, the duties and functions of defendant City's officials entailed the reasonable exercise of proper and lawful discretion and defendant City is, therefore, entitled to governmental immunity from liability.

NINTH AFFIRMATIVE DEFENSE

535. The defendants may be entitled to an offset as to any recovery by plaintiff against them.

TENTH AFFIRMATIVE DEFENSE

536. This action, or portions thereof, may be barred by the doctrines of res judicata and collateral estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

537. Plaintiff's claims may be barred, in whole or in part, by the applicable statute of limitations.

TWELFTH AFFIRMATIVE DEFENSE

538. Plaintiff is not entitled to punitive damages against the City of New York. Punitive damages cannot be recovered against the other defendants and, if available, the amount of such damages shall be limited by applicable state and federal law, including due process and other provisions of law.

THIRTEENTH AFFIRMATIVE DEFENSE

539. The defendants Beisel, Califano, Wilde, Fennel and Zaroogian are entitled to absolute immunity arising out of any Grand Jury testimony provided and/or acts in preparation for and in connection with the underlying Grand Jury presentation.

FOURTEENTH AFFIRMATIVE DEFENSE

540. Plaintiff has failed to mitigate damages.

FIFTEENTH AFFIRMATIVE DEFENSE

541. Plaintiff has failed to comply with conditions precedent to suit.

SIXTEENTH AFFIRMATIVE DEFENSE

542. The defendants Beisel, Califano, Wilde, Fennel and Zaroogian are entitled to absolute immunity arising out of any testimony provided and/or in preparation for and in connection with such testimony.

WHEREFORE, defendants City, Beisel, Zaroogian, Califano, Wilde and Fennel respectfully request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
 March 21, 2022

HON. SYLVIA O. HINDS-RADIX
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the City of New York
*Attorney for Defendants City of New York,
John Beisel, John Califano, John Wilde,
Jerry Fennel and George Zaroogian*
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New York, New York 10007
(212) 356-3519

By: /s/ Mark D. Zuckerman
Mark D. Zuckerman
Senior Counsel